

**ZONING BOARD OF APPEALS**  
**MEETING MINUTES**  
**February 10, 2009**  
**4:00 P.M.**

**CALL TO ORDER:** Mr. John Stetler, called meeting to order at 4:00 p.m.

**MOTION:** Made by Mr. Deland Davis to have Mr. John Stetler Chair the meeting today as the Chairperson and Vice Chairperson are excused; supported by Mr. Gentry Hammons; all in favor, none opposed.

**ATTENDANCE:**

**Members Present:** Rick Barnes, Deland Davis, Mike Fatt, Gentry Hammons, and John Stetler

**Members Excused:** Greg Dunn, James Moreno and Carlyle Sims

**Staff Present:** Glenn Perian, Senior Planner; and Leona Parrish, Admin. Assistant; Planning Dept.; Kim Tuck, Building Superintendent, Inspections; Dennis McKinley, Administrator, Code Compliance; Eileen Wicklund, City Attorney; and Susan Bedsole, License and Compliance Director

**ADDITIONS OR DELETIONS TO THE AGENDA:** Mr. Glenn Perian provided a hand-out regarding Accessory Buildings, to be discussed under Comments by Members on this agenda.

**OLD BUSINESS:** None

**NEW BUSINESS:**

**Appeal # Z-03-09:**

Mr. Glenn Perian stated this was an appeal from Ms. Precious Holder, 104 Lathrop St., requesting a variance to allow continued use of a Legal Non-Conforming property as a residential use in an "I-1 Light Industrial District" for property located at 101 Angell Street. He stated this property had not been in use for more than one year and was issued a letter on December 24, 2008 from the Inspections Division notifying her that the property is out-of-compliance; this is why she is seeking a variance. Mr. Glenn Perian stated on January 20, 2009 notices were mailed to everyone within 300 ft. (17 properties) and an advertisement was published in the B.C. Shopper on January 22, 2009.

Mr. Kim Tuck, Building Superintendent, Inspections Department, City of Battle Creek was present. Stated last year they acquired a search warrant for this property and found that both the house and garage did fall under the criteria for demolition. Said the owner requested it to be appealed for continuation of use for residential purposes. Noted according to the dangerous building process a test must be met to allow a building to be demolished and that test is the cost of repair exceeds the State equalized value for the house and garage. In this case that test was met in both the garage and house and their evaluation was very conservative repair estimate and yet it still met the criteria outlined in the State Law that governs our use for dangerous building evaluations. Said it outlines the exterior deficiencies and roof leaking, ceilings have collapsed in portions of the building, plumbing components have been disconnected, electrical services are over-fused and several electrical components are disassembled, floor conditions are very poor and unsanitary, windows have been broken in several areas of the building; and the building was secured with plywood to keep vandals out. Noted the damage has been several years and has been documented since early in the year 2000. (See attached report hand-out).

Ms. Eileen Wicklund, City Attorney asked Mr. Tuck how long has he worked in his current position. Mr. Tuck, Building Superintendent, Inspections Department, City of Battle Creek stated he has worked in his current position since 1985, and prior to this he was a Housing Rehab Loan Officer involved in writing specifications and preparing bid packages for housing rehab projects.

Ms. Eileen Wicklund asked Mr. Tuck if in his experience had these deteriorations were recent or occurred over a period of time. Mr. Tuck stated the conditions appear to have been present for several years. Their documentation from the Dangerous Building hearing process began in early 2000.

Mr. John Stetler noted the meeting guidelines to anyone present and Opened the Public Hearing.

Ms. Precious Holder, 104 Lathrop, Battle Creek, MI (owner) was present and came forward to speak. Stated her son wants to use this property as a residence and has plans for renovation. That she never received any of the mailings sent out in the year 2000 as they were sent to 101 Angell St.; and only as recent as September of 2008, had received notices from the City. Said Mr. Presecan, Code Compliance Officer gave her the information regarding the requirements and said he was not aware of her address and that she had always provided her address to Code Compliance.

Ms. Holder said in 2004 she did hire someone who was a contractor to do the repairs, which was a bad deal and was ripped off. In 2003- 2007 she was injured and is currently handicapped. In 2007 had a new kitchen done, agrees there has been water damage but the property does have good wall plaster without any holes; said the ceiling in the back bedroom had a leak and she did have the ceiling repaired and new roof on the back done. Said that the photos do not give a good picture of what it looks like, that the living room, den area have nothing wrong with the walls, and that the upstairs has paneling. Noted it does need a new roof and her intentions are to restructure the house and repair the bathroom. Said she has certified family members that can do all the repairs and bring it up to code.

Mr. Gentry Hammons asked if she tried to sell the property. Ms. Holder said no, she never intended to sell the property that it had been in the family a long time. Her father owned Holders Flash Cleaners across the street from the house and since the year 2000 after her father passed she told Mr. McKinley she had no interest in that property and it was torn down and cleared out. Said they have rented or leased the residential property and that the windows had been broken out and she enclosed the porch with no windows. Said in 2005 she leased the property to a contractor who was supposed to do the repairs and did not do them and in 2007 was when the electric was shut off.

Mr. Gentry Hammons asked if she notified the police that the property was going to be vacant for 180 days or more. Ms. Holder stated yes, in 2000 it was broken into and there was several police reports stating so.

Mr. Hammons asked if there was an attempt to solve the problems with the house in 2000, if not why not; which is called preventive maintenance.

Ms. Holder stated she was not here in 2000, but in 2002 she remembers talking to Assistant City Manager, Barbara, who called her in regards to her mothers Cadillac that was on the property, which was a very nice car, and asked her to have it moved because it had no current license, so she gave it way in order to comply.

Ms. Holder stated she does have other properties and have slowly been working on this property. Said she left in 2002 to take care of her mother, she then became handicapped and unable to attend to the house. Said her sister did do some repairs and then had to leave. She said this was her first year back as of May 2008, and moved in December/January, but as of May then she was back and had done some work on the porch, and did not fix the window on the side and only repaired one as they planned to put new windows in the whole house. Said this property is not in as bad of shape as the photos appear.

***Mr. John Stetler asked if there were any others here to speak for or against this variance, seeing none he called this public hearing to a close and would entertain a motion.***

***MOTION: MR. GENTRY HAMMONS MADE A MOTION TO APPROVE # Z-03-09 VARIANCE TO ALLOW CONTINUED USE OF A LEGAL NON-CONFORMING PROPERTY AS A RESIDENTIAL USE IN AN "I-1 LIGHT INDUSTRIAL DISTRICT" FOR PROPERTY LOCATED AT 101 ANGELL STREET, SUPPORTED BY MR. MIKE FATT.***

**Discussion:**

Mr. John Stetler read the document handed out from Mr. Gentry Hammons which also stated he would not be in support of this variance. (See attached hand-out)

***MR. JOHN STETLER ASKED FOR ANY ADDITIONAL COMMENTS, BEING NONE A VOTE WAS TAKEN ON THE MOTION FOR THE VARIANCE; NONE IN FAVOR; ALL OPPOSED: MOTION FAILED. (See Attached Sheet of Zoning Board of Appeals Findings)***

Mr. Glenn Perian read #1 and #3 from the findings criteria for denying this appeal:

1. A variance may be granted only when it can be clearly demonstrated by the petitioner that hardship or practical difficulty will in fact exist if such a variance is not granted.
3. In no case shall a variance be granted if it is determined by the Board that the applicant has created the hardship or practical difficulty.

Mr. John Stetler stated if they wished to do so, they have an option to appeal to the Circuit Court to overturn this board's decision.

**Election of Officers – Year 2009:**

***MOTION: MR. DELAND DAVIS MADE A MOTION TO POSTPONE ELECTION OF NEW OFFICERS FOR 2009 UNTIL NEXT MEETING, TO ALLOW OTHER ZONING BOARD MEMBERS TO BE PRESENT FOR THE ELECTION; SECONDED BY MR. HAMMONS; ALL IN FAVOR, NONE OPPOSED, MOTION CARRIED – APPROVED POSTPONEMENT.***

**APPROVAL OF MINUTES:**

***MOTION WAS MADE BY MR. MIKE FATT TO APPROVE THE JANUARY 13, 2009 ZONING BOARD OF APPEALS MINUTES AS SUBMITTED, SUPPORTED BY MR. RICK***

***BARNES. ALL IN FAVOR, NONE OPPOSED, MOTION CARRIED - APPROVED.***

**COMMENTS BY THE PUBLIC:** None

**COMMENTS BY THE MEMBERS / STAFF:**

Mr. Glenn Perian stated at last months meeting there was a request to increase the size of an accessory building and that Mr. Stetler stated he was interested in looking at amending the ordinance. He and Mr. Stetler met last week; referenced the hand-out of their discussion and map outlining that discussion. He asked the Zoning Board members for their input regarding amendments the ordinance for the allowable size for accessory buildings in the city.

Mr. John Stetler stated that this Zoning Board had approved a lot of accessory buildings in the past and he suggests that they either stop approving or get the code to be more in compliance with their thinking and take it to the Planning Commission to see if they wish to amend. His personal opinion is that out buildings are not very conducive to good residential development. If they are within 100 ft. of the road or right-of-way, that building should appear to blend with the residence for a better visual appearance. He believes there should be some exceptions for that one percent rule, for example; one acre parcels, or 10 acre parcels that have equipment to maintain their property. Mr. Stetler asked for comments to be taken to the Planning Commission.

Mr. Rick Barnes stated that smaller lots also need larger storage buildings, but should not go over the allowed foot print of the property. He believes times have changed and people do have more stuff to store and does agree that it should match the residential structure.

Mr. Mike Fatt stated Neighborhood Planning Council #9 had discussed and feel that pole buildings should not be larger than the size of the residence. They should limit the plumbing and electric and door height to keep from becoming a business.

Mr. John Stetler stated it is time to develop something and needs to discuss it further.

Mr. Deland Davis stated that people do have RV's and need larger door openings to allow storage.

Mr. Rick Barnes noted that on Stone Jug Road there is a house that is attached to a large pole barn because it is attached they were allowed to build it so large. Said they might need to address this type of issue if it is to be aesthetically addressed.

It was suggested the issue regarding Accessory Buildings be added to next months agenda for further discussion before taking it to the Planning Commission.

**ADJOURNMENT:** Motion made by Mr. Deland Davis to adjourn the meeting, second by Mr. Rick Barnes; all in favor meeting adjourned at 4:38 p.m.

Submitted by: Leona A. Parrish  
Administrative Assistant, Planning Department